APPENDIX

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APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 81-2252

United States of America,

Appellee,

v.

Lee S. Leichtling,

Appellant.

Appeal from the United States District Court
for the Eastern District of Missouri.

Submitted: April 15, 1982

Filed: July 19, 1982

Before BRIGHT and HENLEY,* Circuit Judges, and BARTLETT, District Judge.**

HENLEY, Senior Circuit Judge.

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* The Honorable J. Smith Henley assumed senior status on June 1, 1982.

** The Honorable D. Brook Bartlett, United States District Judge, Western District of Missouri, sitting by designation.

Lee S. Leichtling has appealed his conviction in the district court[1] on six counts of obtaining a controlled substance by fraud, in violation of 21 U.S.C. § 843(a)(3), and one count of possession of a Schedule II controlled substance with intent to distribute, in violation of 21 U.S.C. § 843(a)(1). The gravamen of Leichtling's contentions on appeal is that twenty-nine of the government's exhibits (described in the Appendix hereto) were improperly admitted into evidence in violation of his fourth amendment rights. For reasons to be stated, we affirm.

In early July, 1981 federal Drug Enforcement Administration (DEA) agents applied to a federal magistrate for a warrant to search the residence of appellant, a thirty-seven year old dentist. The application was accompanied by an affidavit; however, none of the agents applying for the warrant testified before the magistrate. The affidavit stated that DEA agents had received information regarding a series of purchases of pharmaceutical cocaine by the Rock Road Pharmacy in DeSoto, Missouri, and that further investigation had revealed that a shipment of two bottles of cocaine-hydrochloride was to be delivered to that pharmacy on May 22, 1981. According to the affidavit, surveillance initiated by the officers revealed an individual, subsequently identified as Dr. Leichtling, leaving the pharmacy with two similar bottles, which had been placed in a brown plastic case. This individual entered a blue Mercedes convertible and drove "in the direction of the residence which is the subject of this search warrant." The affidavit also recited that appellant was observed on July 10, 1981 exiting the pharmacy with two one-ounce bottles, which had apparently been placed in the same plastic case,[2] and that he entered his automobile and "pro-

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[1] The Honorable James H. Meredith, United States Senior District Judge, Eastern District of Missouri.

[2] The officers' information indicated that the pharmacy had received an additional shipment of two one-ounce bottles of cocaine-hydrochloride on that day.

ceeded to drive to the above-described residence." The affidavit further recited that Leichtling had never been authorized or registered to possess, distribute or dispense Schedule II substances.

The warrant was issued, and at approximately 8:15 a.m. on July 17, 1981 law enforcement officers arrived at Dr. Leichtling's home. They were greeted at the door by the appellant. The officers introduced themselves and asked if they could discuss with him the cocaine purchases. The doctor admitted them to his house, and he was immediately thereafter advised of his *Miranda* rights.[3] Appellant was asked if he used cocaine in his practice, and he stated that he mixed a 4-6% solution in tap water at home, to be administered during root canal work. He also stated that he mixed the solution at home for fear that someone would break into his office and take the cocaine. When asked if he would surrender the cocaine, he assented and allowed an agent to accompany him to his bedroom, where he opened a dresser drawer and removed two bottles of cocaine. One of these bottles had been opened, and about one-quarter of the contents of that bottle was missing.

Appellant was subsequently placed under arrest and advised that the officers had a search warrant. A search of the house was made, and other evidence was seized. The officers also seized appellant's automobile, which was parked outside his house. After seizure, but before impoundment, the vehicle was searched and a scale and a bottle labeled "cocaine hydrochloride" were taken from the trunk of the car.

Evidence was also obtained from appellant's office on the same day. The DEA agents who went to that office had in their possession an administrative search warrant for the doctor's

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[3] The evidence fairly indicates that five law enforcement officers were present at this time.

records. However, they also requested samples of his mouthwash solutions, and these samples were given to them by appellant's dental assistant.[4]

Leichtling's primary contention on appeal is that the warrant for the search of his residence was defective and that all fruits of that search should therefore have been suppressed. He bases this contention on the fact that the affidavit fails to establish that the DEA agents saw him enter his house.

The district court found that at the time the warrant was applied for, the issuing magistrate relied solely on the affidavit which was presented to him, and that no evidence was adduced before the magistrate. In these circumstances, only that information which is found within the four corners of the affidavit may be considered in determining the existence of probable cause. *See United States* v. *Anderson,* 453 F.2d 174, 175 (9th Cir. 1971); *United States* v. *Pinkerman,* 374 F.2d 988, 989 (4th Cir. 1967); *Gillespie* v. *United States,* 368 F.2d 1, 3 (8th Cir. 1966).

In reviewing the validity of the warrant, we are guided by certain well established general principles. The search of Leichtling's house was sanctioned by a magistrate's issuance of a search warrant based upon a finding of probable cause. "Courts evince a strong preference for searches made pursuant to warrant, and, in some instances, may sustain them where warrantless searches based on a police officer's evaluation of probable cause might fail." *United States* v. *Brown,* 584 F.2d 252, 256 (8th Cir. 1978), *cert. denied,* 440 U.S. 910 (1979); *United States* v. *Christenson,* 549 F.2d 53, 55 (8th Cir. 1977). *See United States* v. *Ventresca,* 380 U.S. 102, 108 (1965); *United States* v. *McGlynn,* 671 F.2d 1140, 1146 (8th Cir. 1982). Accord-

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[4] The record reflects that the requesting officer probably had been in telephone contact with the DEA agents at appellant's residence prior to the time this request was made.

ingly, reviewing courts should interpret affidavits for search warrants in a commonsense and realistic fashion, and deference is to be accorded an issuing magistrate's determination of probable cause. *Spinelli* v. *United States*, 393 U.S. 410, 419 (1969); *United States* v. *Brown*, 584 F.2d at 256. "[I]n doubtful or marginal cases, the resolution of the Fourth Amendment question should be determined to a large extent by the preference accorded to searches based upon warrants." *United States* v. *Christenson*, 549 F.2d at 55. *See United States* v. *Ventresca*, 380 U.S. at 109; *United States* v. *Brown*, 584 F.2d at 256, *and cases cited therein.*

Appellant relies primarily on *United States* v. *Taylor*, 599 F.2d 832 (8th Cir. 1979), in support of his contention that the affidavit in the case at bar was inadequate. In *Taylor*, the affidavit recited that one Worley was observed exiting a vehicle and walking toward a residence which was assumedly used to store illegally obtained firearms. Because Worley, who was an alleged coconspirator, had not been observed entering or exiting that residence, this court held that there was only a suspicion that Worley had actually done so. *Id.* at 836. In *Taylor*, however, the affidavit did not recite that the residence was occupied by either Taylor or Worley, while in the instant case it is not disputed that the application for the warrant and the supporting affidavit described the residence to be searched as appellant's residence, as it in fact was.

It is settled in this circuit that when an application for a warrant is being considered, the issuing magistrate may properly rely on normal inferences drawn by the surrounding circumstances and the allegations of fact contained in the affidavit. *United States* v. *McGlynn*, 671 F.2d at 1146; *United States* v. *Brown*, 584 F.2d at 256, *and cases cited therein.* As this rule is applied to the instant case, we think the recitation in the affidavit that Dr. Leichtling was observed to drive "to" his residence raises a reasonable inference that he actually entered his residence, because we can think of few situations where a person would

drive to his residence without entering it. Further, this court has held that " '[t]he affidavit need only establish the *probability* of criminal activity and secreting of evidence on specific premises, not proof beyond a reasonable doubt.' " *United States* v. *Brown*, 584 F.2d at 257, *quoting United States* v. *Smith*, 462 F.2d 456, 460 (8th Cir. 1972) (emphasis original). We think the affidavit in this case establishes the requisite probability, and therefore, hold that the search warrant was validly issued. *But see United States* v. *Schmidt*, 662 F.2d 498, 505 n.9 (8th Cir 1981) (dictum).

Appellant next argues that the seizure of the two bottles labeled "cocaine hydrochloride" taken from his dresser was invalid because the seizure was not made pursuant to a valid consent. We disagree.

In *United States* v. *Allison*, 619 F.2d 1254 (8th Cir. 1980), this court stated:

> [I]n normal consent search situations, "the question whether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." *Schneckloth* v. *Bustamonte*, [412 U.S. 218, 227 (1973)].
>
> Since the issue of consent is usually a factual one, a district court's finding of involuntariness must be accepted on appeal unless the finding is clearly erroneous. *Martin* v. *United States*, 586 F.2d 1206, 1211 (8th Cir. 1978); *United States* v. *Hearn*, 496 F.2d 236, 242 (6th Cir.), *cert. denied*, 419 U.S. 1048, 95 S. Ct. 622, 42 L.Ed.2d 642 (1974).

Id. at 1262. This standard, moreover, has not been affected by recent Supreme Court decisions such as *United States* v. *Mendenhall*, 446 U.S. 544 (1980).

The evidence shows that appellant was approximately thirty-seven years old at the time of the consent, and that he is an

educated man. In addition, there is no dispute that appellant was read his *Miranda* warnings, and stated that he understood them, no more than ten minutes prior to the time of consent. These are all factors which may be considered by the district court in determining whether there was a voluntary consent. *See Schneckloth* v. *Bustamonte,* 412 U.S. at 226; *United States* v. *Matthews,* 603 F.2d 48, 52 (8th Cir. 1979).

Appellant nevertheless contends that the presence of police officers' and the failure of the law enforcement officers to inform him that he could withhold consent indicate that there was no voluntary consent on his part. We observe, however, that even where the presence of officers could be construed as constituting "custody," custody alone has never been sufficient to show that consent to a search was the result of coercion. *United States* v. *Matthews,* 603 F.2d at 52. Further, while failure to inform a person of his right to withhold consent is a factor that may be taken into account in determining whether there has been a voluntary consent, *United States* v. *Mendenhall,* 446 U.S. at 558-59, law enforcement officers are nevertheless not required to inform a person of his or her right to withhold consent as a prerequisite to the validity of such consent. *Schneckloth* v. *Bustamonte,* 412 U.S. at 231-33.

We conclude that the district court could properly find, in the totality of the circumstances, that Leichtling's actions in removing the bottles from his dresser drawer and surrendering them to the DEA agents constituted a voluntary consent on his part. The district court's findings in this regard are not clearly erroneous and will therefore be upheld.

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[1] In this context, appellant also claims that the officers were already searching the living room at the time of the consent. However, our review of the transcript reveals that there was credible testimony that no such search was being conducted at that time.

Appellant's remaining contentions concern the admissibility of evidence obtained from the trunk of his automobile and from his dental office. However, as the Appendix shows, the nature of this evidence is such that it is cumulative at best. Thus, even if we assume for the purposes of this discussion that this evidence was improperly seized, any error in its admission was harmless beyond a reasonable doubt. *Chambers* v. *Maroney*, 399 U.S. 42 (1970).

The judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX

DESCRIPTION OF APPELLEE'S EXHIBITS, LOCATION WHERE FOUND, AND SOURCE FROM WHICH OR MEANS BY WHICH EXHIBITS ARE OBTAINED

Exhibit No.	Description	Location	Means
1	Mouth wash sample	Dentist's office	Receptionist
2	"	"	"
3	"	"	"
4	Bottle containing Mannitol	Leather case in hall closet	House search
5	7 Bottles containing various noncontrolled substances	Hall closet	"
6	Bottle containing traces of cocaine	"	"
7	DeSoto Pharmacy prescription bottles bearing witness Harris' name and containing traces of Methaqualone	Back hall closet	"

Exhibit No.	Description	Location	Means
8	3 Bottles containing Mannitol	Leather case in hall closet	"
9	2 Green Bottles containing Methaqualone tablets	Back hall closet	"
10	Bottle containing traces of cocaine	Hall closet	"
11	2 Bottles containing approx. 47 g. cocaine	Dresser in bedroom	Consent of Leichtling
12	Small balance with traces of cocaine	Hall closet	House search
13	Bottle with traces of cocaine	Closet	"
14	2 Brown bottles labeled "cocaine hydrochloride"	Hall closet	"
15	"	"	"
16	Brown scale	"	"
17	Triple beam scale	"	"
18	Screen separator and sifter	Box on fireplace mantel	"
19	210 clear plastic bags	"	"
20	Funnel and separator system	Hall closet	House search
21	Sifter and funnel	Kitchen closet	"
22	Ohaus scale	Auto trunk	Auto search
23	3 Bottles labeled "cocaine hydrochloride"	"	"
24	Envelope bearing financial notations	Top of desk in residence	House search
25	2 Pieces of paper bearing financial notations	"	"
26	Personal checkbook	Case on living room couch	"
27	Patient profile on Leichtling	Rock Road Pharmacy	Rock Road Pharmacy
30	Prescriptions for cocaine hydrochloride	"	"
32	Prescriptions for Methaqualone	DeSoto Pharmacy	DeSoto Pharmacy

APPENDIX 2

§ 843. Prohibited acts C

Unlawful acts

(a) It shall be unlawful for any person knowingly or intentionally—

(1) who is a registrant to distribute a controlled substance classified in schedule I or II, in the course of his legitimate business, except pursuant to an order or an order form as required by section 828 of this title;

(2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4)(A) to furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed under this subchapter or subchapter II of this chapter, or (B) to present false or fraudulent identification where the person is receiving or purchasing piperidine and the person is required to present identification under section 830(a) of this title; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit substance.

Communication facility

(b) It shall be unlawful for any person knowingly or intentionally to use any communication facility in committing or in causing or facilitating the commission of any act or acts constituting a felony under any provision of this subchapter or subchapter II of this chapter. Each separate use of a communication facility shall be a separate offense under this subsection. For purposes of this subsection, the term "communication facility" means any and all public and private instrumentalities used or useful in the transmission of writing, signs, signals, pictures, or sounds of all kinds and includes mail, telephone, wire, radio, and all other means of communication.

Penalties

(c) Any person who violates this section shall be sentenced to a term of imprisonment of not more than 4 years, a fine of not more than $30,000, or both; except that if any person commits such a violation after one or more prior convictions of him for violation of this section, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 8 years, a fine of not more than $60,000, or both.

Pub.L. 91-513, Title II, § 403, Oct. 27, 1970, 84 Stat. 1263; Pub.L. 95-633, Title II, § 202(b)(3), Nov. 10, 1978, 92 Stat. 3776.

APPENDIX 3

§ 841. Prohibitied acts A

Unlawful acts

(a) Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally—

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Penalties

(b) Except as otherwise provided in section 845 of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a controlled substance in schedule I or II which is a narcotic drug, such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(B) In the case of the controlled substance in schedule I or II which is not a narcotic drug or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4), (5), and (6) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter of other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $30,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $10,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $20,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $5,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant subsatnces, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $10,000, or both.

(4) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 844 of this title.

(5) Notwithstanding paragraph (1)(B) of this subsection, any person who violates subsection (a) of this section by manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, except as authorized by this subchapter, phencyclidine (as defined in section 830(c)(2) of this title) shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(6) In the case of a violation of subsection (a) of this section involving a quantity of marihuana exceeding 1,000 pounds, such person shall be sentenced to a term of imprisonment of not more than 15 years, and in addition, may be fined not more than $125,000. If any person commits such a violation after one or more prior convictions of such person for an offense punishable under paragraph (1) of this paragraph, or for a felony under any other provision of this subchapter, subchapter II of this chapter, or other law of the United States relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, and in addition, may be fined not more than $250,000.

Special parole term

(c) A special parole term imposed under this section or section 845 of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845 of this title shall be in addition to, and not in lieu of, any other parole provided for by law.

Piperidine offenses and penalty

(d) Any person who knowingly or intentionally—

(1) possesses any piperidine with intent to manufacture phencyclidine except as authorized by this subchapter, or

(2) possesses any piperidine knowing, or having reasonable cause to believe, that the piperidine will be used to manufacture phencyclidine except as authorized by this subchapter,

shall be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $15,000, or both.

Pub.L. 91-513, Title II, § 401, Oct. 27, 1970, 84 Stat. 1260; Pub.L. 95-633, Title II, § 201, Nov. 10, 1978, 92 Stat. 3774; Pub.L. 96-359, § 8(c), Sept. 26, 1980, 94 Stat. 1194.

APPENDIX 4

AFFIDAVIT

Affiant Steven Stoddard, being duly sworn, states that he is a Special Agent for the Drug Enforcement Administration of the Department of Justice, currently assigned to the St. Louis District Office. Affiant has been a Special Agent with the Drug Enforcement Administration for approximately 12 years, and during that time has received training in the area of the investigation of violations of Federal narcotics controlled substance laws.

In March 1981, the St. Louis District Office of the Drug Enforcement Administration received information regarding a series of purchases of pharmaceutical cocaine by Rock Road Pharmacy of DeSoto, Missouri. A subsequent investigation by the affiant and other agents of the Drug Enforcement Administration revealed a shipment of pharmaceutical cocaine was to be delivered to Rock Road Pharmacy on or about May 22, 1981, to consist of two one-ounce bottles of pharmaceutical cocaine. Surveillance initiated by the affiant and other agents revealed an individual, subsequently identified as Lee Leichtling, to enter the Rock Road Pharmacy and, upon Leichtling's exiting the pharmacy, the agents observed the outline of what appeared to be two similar bottles in a plastic case in his possession. Affiant and other agents then continued their surveillance and observed the subject Lee Leichtling to enter a blue Mercedes automobile and drive in the direction of the residence which is the subject of this search warrant. Affiant and other agents continued their investigation and determined the above residence to be that of Lee Leichtling, whose occupation is that of a dentist engaged in the general practice of dentistry from his office located at 116 North Main Street in downtown DeSoto, Missouri.

Subsequent investigation by the affiant and other DEA Agents revealed that from December 1979 through May 22, 1981, approximately twelve shipments of a total of approximately 23 ounces of pharmaceutical cocaine were sent to Rock Road Pharmacy.

A subsequent surveillance established by the affiant and other DEA Agents revealed that on July 10, 1981, an additional shipment consisting of two one-ounce bottles of pharmaceutical cocaine to be delivered to the Rock Road Pharmacy at DeSoto, Missouri. On the same date, a surveillance of Rock Road Pharmacy revealed the subject Lee Leichtling to enter the pharmacy and receive two one-ounce bottles from the pharmacist and depart the store. At this time, surveilling agents observed the subject Lee Leichtling to place a pharmacy bag inside a brown vinyl case which appeared to be identical to the case he used on May 22, 1981; thereafter, the subject Lee Leichtling entered a blue Mercedes automobile which is registered to him, and proceeded to drive to the above-described residence.

DEA Agents continued their investigation and contacted the Chief of the Registration Section of the Drug Enforcement Administration in Washington, D.C., and ascertained that the subject Lee Leichtling is not authorized or registered to possess, distribute, or dispense Schedule II narcotic controlled substance drugs.

Based on this affiant's prior training and experience, he is aware that cocaine is in fact classified under the narcotics laws as a Schedule II narcotic controlled substance drug.

Additional investigation has revealed that subject Lee Leichtling is not registered with state authorities at the Missouri Bureau of Narcotics to possess, distribute, or dispense controlled substance drugs. Affiant states that under State law cocaine is classified as a Schedule II narcotic controlled substance drug.

Additional investigation by affiant and other DEA Agents has revealed that cocaine is not generally utilized in the general practice of dentistry.

STEVEN STODDARD, Special Agent
Drug Enforcement Administration

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MISSOURI

Docket No._____

Case No._____

United States of America,

vs.

Single-Family White Frame Residence, immediately northeast of the intersection of Highway 21 and Boyd Street, DeSoto, Jefferson County, Missouri.

AFFIDAVIT FOR SEARCH WARRANT

BEFORE David D. Noce
Name of Judge[1] or Federal Magistrate

Address of Judge[1] or Federal Magistrate

The undersigned being duly sworn deposes and says:

That he has reason to believe that (on the premises known as) residence, post office address R.F.D. 6, Box 42A, DeSoto, Missouri, being more particularly described as a single-family white frame residence with black asphalt shingle roof, having a single-car garage attached on the south side of the house, located immediately northeast of the intersection of Highway 21 and Boyd Street, DeSoto, Jefferson County, in the Eastern District of Missouri there is now being concealed certain property, namely a quantity of cocaine, a Schedule II narcotic controlled substance drug; together with weighing and packaging material adulterants and dilutants; and items of personal iden-

tification, including rent and utility receipts and telephone tolls tending to establish constructive possession of such contraband, drugs, telephone tolls and bills, hotel bills, records of banking, personal address books, records and notations of narcotic purchases and sales, records of drug customers and sources and of indebtedness for narcotics which are contraband and evidence of the unlawful possession and distribution of the same and of conspiracy to do so and possess and distribute, in violation of Federal law, i.e., Title 21, United States Code, § 841(a)(1), etc.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows.[3]

SEE ATTACHED AFFIDAVIT

/s/ STEVEN STODDARD, Special Agent
Signature of Affiant.
Drug Enforcement Administration
Official Title, if any.

Sworn to before me, and subscribed in my presence, July 16, 1981

/s/ DAVID D. NOCE
Judge[1] or Federal Magistrate.

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[1] United States Judge or Judge of a State Court of Record.

[2] If a search is to be authorized "at any time in the day or night" pursuant to Rule 41(c), show reasonable cause therefor.

[3] If the warrant is to authorize execution pursuant to 21 U.S.C. § 879 without prior notice of authority or purpose, indicate the circumstances creating the need for such a warrant.

APPENDIX 5

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MISSOURI

Docket No. 81-1176M-2

United States of America,

v.

Single-Family White Frame Residence, immediately northeast of the intersection of Highway 21 and Boyd Street, DeSoto, Missouri.

SEARCH WARRANT

TO: Steven Stoddard, Special Agent, Drug Enforcement Administration, or to any duly authorized Agent of the Drug Enforcement Administration, or to any Civil Officer of the United States authorized to enforce any law thereof.

Affidavit(s) having been made before me by Steven Stoddard, Special Agent, Drug Enforcement Administration.

that he has reason to believe that (on the premises known as) residence, post office address R.F.D. 6, Box 428, DeSoto, Missouri, being more particularly described as a single-family white frame residence with black asphalt shingle roof, having a single-car garage attached on the south side of the house, located immediately northeast of the intersection of Highway 21 and Boyd Street, DeSoto, Jefferson County. A photograph of this residence is attached. S.D.S.

In the Eastern District of Missouri there is now being concealed certain property, namely a quantity of cocaine, a Schedule II narcotic controlled substance drug; together with weighing and packaging materials, adulterants and dilutants; and items of

personal identification, including rent and utility receipts and telephone tolls tending to establish constructive possession of such contraband, drugs, telephone tolls and bills, hotel bills, records of banking, personal address books, records and notations of narcotic purchases and sales, records of drug customers and sources and of indebtedness for narcotics which are contraband and evidence of the unlawful possession and distribution of the same and of conspiracy to do so and possess and distribute, in violation of Federal law, i.e., title 21, United States Code, § 841(a)(1), etc.

and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the person or premises above described and that grounds for application for issuance of the search warrant exist as stated in the supporting affidavit(s).

You are hereby commanded to search within a period of ten days (not to exceed 10 days) the person or place named for the property specified, serving this warrant and making the search in the daytime (6:00 a.m. to 10:00 p.m.) and if the property be found there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before David D. Noce, Federal judge or magistrate, as required by law.

Dated this 16th day of July, 1981.

David D. Noce
Judge (Federal or State Court of Records) or Federal Magistrate.

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* The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime." (Rule 41(c). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

Return

I received the attached search warrant , 19 , and have executed it as follows:

On , 19 at o'clock M, I searched the person or premises described in the warrant and

I left a copy of the warrant with (name of person searched or owner or "at the place of search") together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

(See attached list)

This inventory was made in the presence of
and

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

_____

Subscribed and sworn to and returned before me this day of , 19 .

_____

Federal Magistrate